IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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C.R. No.5469 of 2007
Date of Decision:19.10.2007

Ajmer Giri Chela Baba Ram Giri Chela Baba Navdeshra Giri
.....Petitioner

Vs.

Municipal Council Fazilka and another
.....Respondents

CORAM:- HON'BLE MR. JUSTICE RAJESH BINDAL

Present:- Mr. Sandeep Jasuja, Advocate for the petitioner.

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Rajesh Bindal, J.

The present petition arises out of order passed by the Court below whereby the appeal filed by the petitioner/ plaintiff against the order passed by the Trial Court in application for interim injunction under Order 39 Rules 1 and 2 of the Code of Civil Procedure though was partially accepted but the petitioner is still aggrieved.

The petitioner/ plaintiff filed a suit for permanent injunction restraining the defendants from interfering in his possession of the property in dispute in which certain constructions in the form of Temple, Shivala, Baradari and Smadh have been made and certain vacant portion is also there. Learned trial court restrained the respondents/ defendants from interfering in the possession of the petitioner/ plaintiff till the disposal of the suit. However, the appellate court modifying the injunction order directed that the respondents/ defendants are restrained from interfering in the possession of the petitioner/ plaintiff with regard to Smadh, Shiv Mandir, Shivala and Baradari in the suit land. However, the interim order already granted with regard to the remaining vacant portion of the land was vacated.

Learned counsel for the petitioner submitted that the petitioner/ plaintiff is in possession of the land in dispute since long and he has a right to protect the same and could be dispossessed only in due course of law. However, it is not disputed that as per some scheme framed by the State of Punjab, proposal was made for purchase of the land, however, the same could not be considered as at the time of the application, no such policy was existing. Once, there is no material on record to show that the petitioner/

plaintiff is owner of the land, if he had raised construction of Temple, Smadh etc., on the suit land, in my opinion, the learned lower appellate court had rightly restrained the respondents/ defendants from interfering in his possession of that portion of the land during the pendency of the suit. As far as open portion of the land is concerned, the petitioner is not entitled to protection with regard to the same for the reason that even the petitioner was giving the same on contract (theka) to different persons from time to time for cultivation. I do not find any illegality has been committed by the learned appellate court below in modifying the interim order passed by the trial court.

Accordingly, the revision petition is dismissed.

October 19, 2007 **(RAJESH BINDAL)**
renu **JUDGE**